

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Verizon Petition for	)	WC Docket No. 02-202
Emergency Declaratory and	)	
Other Relief	)	

**COMMENTS OF NEW YORK STATE  
DEPARTMENT OF PUBLIC SERVICE**

**INTRODUCTION AND SUMMARY**

On July 24, 2002, Verizon filed a “Petition for Emergency Declaratory and Other Relief (Petition),” in which it asks the Federal Communications Commission (Commission) to provide “clear guidelines” to the industry that will allow carriers to protect their ability to obtain payment for services they render to other carriers. On July 31, 2002, the Commission released a Public Notice (Notice) requesting comments on Verizon's Petition. Specifically, the Notice seeks comments on Verizon’s requests to: (1) allow carriers to revise tariffs to ensure against non-payment; (2) support wholesale carriers’ efforts in bankruptcy court to obtain adequate assurance; (3) ensure that purchasers of bankrupt carriers’ existing service arrangements comply with cure requirements; and (4) direct local exchange carriers to provide information necessary to coordinate carrier-to-carrier transfers.

The New York State Department of Public Service (NYDPS) submits these comments in response to Verizon’s Petition and encourages the Commission to issue a Notice of Proposed Rulemaking to fully consider its requests.

**I. The Commission Should Consider  
Verizon’s Proposal To Ensure Against  
Non-Payment**

Verizon indicates that it will file revised tariffs to protect itself from competitive carriers who cannot pay their bills for its wholesale services. As part of New York’s ongoing efforts in facilitating customer migration, we invited a collaborative industry group to discuss reforms that could protect consumers from a carrier’s premature exit from the market. Such concepts could conceivably include “default carrier” requirements, surety bonds, or deposit requirements by

wholesale carriers, such as those Verizon proposes in its Petition. The collaborative has not yet reached a consensus. The goals of removing barriers to entry and minimizing overall societal costs, as well as the burdens on carriers and their customers, must be carefully weighed. These measures are worthy of consideration by the Commission.

## **II. The Commission Should Consider A Rulemaking Regarding Commercial Relations Between Carriers**

Verizon raises an issue currently pending before the Commission in WC Docket No. 02-80; that is, how purchasers of bankrupt carriers' assets should deal with Verizon in using those assets to provide service.<sup>1</sup> The company argues that a competitive local exchange carrier (CLEC) that acquires assets from a bankrupt carrier must cure the bankrupt debtor's default before it can enter into contractual arrangements with Verizon for the use of those assets, such as the lease of Unbundled Network Elements. The executory contract provision of Bankruptcy Code § 365 recognizes that a bankrupt entity may have certain contracts that are valuable to its ongoing survival and reorganization and other contracts that are onerous and could hinder a successful reorganization. A contract for wholesale services may be valuable precisely because the supplier would be unwilling to offer those same terms on a going-forward basis at the time of the bankruptcy. However, as a common carrier, Verizon is differently situated than other wholesale suppliers because it is required to strike the same bargain with the debtor or any new applicant pursuant to its tariffs or standard interconnection agreements. Consequently, in several recent bankruptcy cases, a carrier acquiring the assets of the bankrupt entity has not felt compelled to accept an assignment of the debtor's contract with Verizon. Instead, the acquiring carrier has proceeded to establish a new agreement with Verizon. Verizon objects to this result.

While definitive resolution of such matters could vary from one case to another, depending on the facts, there is a basic underlying principle common to all such cases that should be addressed by the Commission generically: that is, whether Verizon's unique role as a common carrier of critical facilities should make it different from other private contracting

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<sup>1</sup> In the Matter of Verizon's Emergency Counter-Petition for Declaratory Ruling Regarding ILEC Obligations to Continue to Provide Services, WC Docket No. 02-80 (rel. May 3, 2002).

parties. The Commission could consider: (1) which carriers, and which customers, will bear the cost of defaulting CLECs under each outcome; (2) what other means are available by which Verizon could protect itself from uncollectible debts owed by bankrupt carriers; (3) which policies will best facilitate efficient use of existing equipment; (4) which position will best provide for customer choice and uninterrupted service to migrating customers; and (5) the potentially discriminatory effects of any such policies. Also, the Commission could consider the consequences not only where contracts are assumed, but also where they are rejected.

### **III. The Commission Should Ensure A Smooth Migration Of Customers Between Carriers**

One of the forms of relief that Verizon seeks in its Petition is a revision of the Commission's regulations to provide for the coordination of connect and disconnect orders. Verizon advocates placing responsibility on a single carrier to coordinate connect and disconnect orders. New York's guidelines clearly specify which carrier is responsible for this task and a host of others.<sup>2</sup> We agree that such delineation of responsibility is necessary to avoid confusion and service interruption.

In New York, we recently issued a revised and expanded version of the CLEC-to-CLEC Guidelines.<sup>3</sup> These Guidelines establish general principles and basic responsibilities of all carriers involved in a customer transfer. They also detail the content and form of customer service records, requests for such records, and local service requests.

Despite these detailed procedures, we recognized that, in the unique circumstances of a "mass migration," when many customers must be moved from a carrier exiting the market, these ordinary procedures don't suffice. Consequently, the NYDPS also created Mass Migration Guidelines, again developed through a collaborative process with extensive input from industry

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<sup>2</sup> The carrier acquiring the customer sends the appropriate notification to the network providers.

<sup>3</sup> Case 00-C-0188, Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, Order Adopting Phase II Guidelines (issued June 14, 2002).

and other participants. These Mass Migration Guidelines were adopted by Order issued December 4, 2001.<sup>4</sup>

### **CONCLUSION**

Verizon's Petition raises valid issues. The NYDPS urges the Commission to consider these questions in a generic Rulemaking.

Respectfully submitted,

Lawrence G. Malone  
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<sup>4</sup> Id., Proceeding on Motion of the Commission to Examine the Migration of Customers Between Local Carriers, Order Adopting Mass Migration Guidelines (issued Dec. 4, 2001). The eight months since the Mass Migration Guidelines were formally approved have seen an unprecedented number of carrier exits from the market. As a consequence, New York rapidly acquired experience in the implementation of the Mass Migration Guidelines. That experience has proved valuable in developing revisions to those Guidelines, which were issued for comment under cover of a Notice issued July 26, 2002.